

APPEAL NO. 032529
FILED OCTOBER 29, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 22, 2003. The hearing officer determined that appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the ninth quarter. Claimant appealed this determination on sufficiency grounds. Claimant also contends that the hearing officer (1) abused her discretion in admitting and excluding certain evidence; (2) misplaced the burden of proof; and (3) denied a motion to change venue. Respondent (carrier) responded that the Appeals Panel should affirm the hearing officer's decision and order.

DECISION

We affirm.

Claimant contends that the hearing officer erred in requiring claimant to have the burden of proof and requiring her to go forward first. Claimant asserts that she had to guess at carrier's defenses to SIBs entitlement. We perceive no error in this regard. Texas Workers' Compensation Commission Appeal No. 010979, decided June 18, 2001.

Claimant contends that the hearing officer abused her discretion in excluding Claimant's Exhibits Nos. 13 and 17, which were applications for SIBs for prior and subsequent quarters and supporting documentation. Claimant asserted that the documents were admissible because SIBs eligibility would be "based upon a matter of law and with regard to whether or not it's comparable to either the 10th or the other quarters." Claimant also seemed to assert that she sought to prove her continued employment with the same employer over different quarters. Claimant was permitted to testify regarding her continued employment over time and her earnings during the qualifying period. We perceive no abuse of discretion.

Claimant contends that the hearing officer abused her discretion in admitting Carrier's Exhibit No. 1, which was a deposition on written questions to claimant's employer. Claimant asserted that it was obtained under false pretenses because it was represented to the employer that the date of the hearing was August 7, 2003, when the hearing was held on August 22, 2003. Carrier asserted that the August 7, 2003, date was a typographical error. Claimant also objected that she did not receive a copy of the order granting the request for deposition on written questions until after the response was completed. The hearing officer heard this objection and determined whether and when claimant received a copy of the order. We perceive no reversible error in the admission of Carrier's Exhibit No. 1.

Claimant asserts that the hearing officer erred in denying a motion to change venue. Claimant resided outside the state of Texas at the time of the hearing. In her

motion and when she discussed venue at the hearing, claimant did not state where she resided at the time of the injury. Claimant sought to change venue to two other cities based on the convenience of her attorney, but did not establish that venue was proper in those cities. Claimant did not assert that good cause did not exist for selection of venue in the city where the hearing was held. A right to venue may be waived. Texas Workers' Compensation Commission Appeal No. 960053, decided February 9, 1996. Claimant has not established that there was reversible error in this regard.

Claimant contends that the hearing officer "tried the case" and was not impartial. We note that the hearing officer has a general duty to develop the evidence. Section 410.163(b). The record does not support claimant's assertions in this regard.

We have reviewed the complained-of determinations regarding the amount of money earned by claimant and good faith and conclude that the issues involved fact questions for the hearing officer. The hearing officer reviewed the record and decided what facts were established. We conclude that the hearing officer's determinations are supported by the record and are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

According to information provided by carrier, the true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Judy L. S. Barnes
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Robert W. Potts
Appeals Judge